

FIRST AMENDMENT
to the
MASTER POWER PURCHASE AND SALE AGREEMENT
AMENDED AND RESTATED CONFIRMATION LETTER

Between
CALIFORNIA DEPARTMENT OF WATER RESOURCES

And
MOUNTAIN VIEW POWER PARTNERS, LLC

This First Amendment to the Amended and Restated Confirmation Letter to the Master Agreement (as defined below) is made and entered into as of July 24, 2009 and shall be effective as of the Effective Date (as defined below) ("Amendment") by and between the California Department of Water Resources, with respect to the Department of Water Resources Electric Power Fund separate and apart from its powers and responsibilities with respect to the State Water Resources Development System, ("CDWR" or "Buyer" or "Party B") and Mountain View Power Partners, LLC ("MVPP" or "Seller" or "Party A"), as successor-in-interest to PG&E Energy Trading – Power, L.P. ("PG&E Energy Trading"). Capitalized terms used but not defined herein shall have the meaning set forth in the Amended and Restated Confirmation Letter to the Master Agreement dated October 1, 2002, as amended ("Confirmation").

RECITALS

WHEREAS, CDWR and PG&E Energy Trading entered into an Amended and Restated Edison Electric Institute Master Power Purchase and Sale Agreement dated October 1, 2002, along with the Cover Sheet and any amendments and annexes thereto (the "Master Agreement");

WHEREAS, CDWR and PG&E Energy Trading entered into the Confirmation, pursuant to the Master Agreement;

WHEREAS, MVPP is the successor-in-interest to PG&E Energy Trading under the Master Agreement and Confirmation;

WHEREAS, CDWR and MVPP (the "Parties") wish to amend the Confirmation as set forth herein.

NOW THEREFORE, in consideration of the mutual promises contained herein and for good and valuable consideration provided for in the Second Amended and Restated Letter Agreement Concerning the Purchase and Sale of Renewable Attributes between Southern California Edison Company and MVPP, dated July 24, 2009 (the "Second Amended and Restated Letter Agreement"), the Parties agree as follows:

1. Special Conditions

The provision in the Confirmation entitled "Special Conditions" is hereby deleted in its entirety and replaced with the following:

"Special Conditions:

From the period commencing on January 1, 2008 until September 30, 2011, Party A hereby provides and conveys the Renewable Product (as defined below) to Party B, for the benefit of SCE. SCE shall compensate Party A for the Renewable Product delivered to Party B, for the benefit of SCE, in accordance with the Second Amended and Restated Letter Agreement.

Party A's obligations regarding the Renewable Product shall be as specified in the Second Amended and Restated Letter Agreement. Party B is not a party to the Second Amended and Restated Letter Agreement and shall not be entitled to exercise any remedies as a result of Party A's failure to comply with its obligations under the Second Amended and Restated Letter Agreement. In the event that Party A fails to comply with its obligations under this Special Condition, its failure shall not be considered an Event of Default and Party B shall not terminate, or exercise any other remedies under, this Agreement. Remedies and damages for any breach of this Special Condition shall be exclusively as set forth in the Second Amended and Restated Letter Agreement.

'Renewable Product' is defined as all Green Attributes (as defined by the CPUC in Decision 08-08-028, Appendix B) associated with all the generation of electricity from the Projects during the Delivery Period.

Green Attributes include:

[A]ny and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential

threat of altering the Earth's climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

The Renewable Product shall be measured in MWh where 1 MWh of Renewable Product is produced when 1 MWh of energy is delivered hereunder."

2. Miscellaneous.

- (a) Effective Date. The Effective Date of this Amendment shall be the date of concurrence by the executive director of the CPUC pursuant to California Water Code Section 80110(c)(5)(B) ("Concurrence"); provided that, if the executive director of the CPUC does not provide Concurrence by September 30, 2009 or affirmatively denies Concurrence, then this Amendment shall be deemed terminated and void *ab initio*.

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

- (b) Reservation of Rights. Except as provided herein, both Parties expressly reserve all of their rights and remedies under the Confirmation and Master Agreement.
- (c) Legal Effect. Except as provided herein, the Confirmation and Master Agreement remain unchanged and shall remain in full force and effect.
- (d) Representations and Warranties. Both parties reaffirm and renew, as of the Effective Date of this Amendment, the Representations and Warranties contained in Section 10.2 of the Master Agreement to the other, provided that Party B shall not be deemed to make the representations set forth in clauses (ix) and (xi) of Section 10.2.
- (e) Successors and Assigns. This Amendment shall be binding on each Party's successors and permitted assigns.
- (f) Severability. Any provision declared or rendered unlawful by any applicable court of law or regulatory agency or deemed unlawful because of a statutory change (individually or collectively, such events referred to as "Regulatory Event") will not otherwise affect the remaining lawful obligations that arise under this Amendment; and provided, further, that if a Regulatory Event occurs, the Parties shall use their best efforts to reform this Amendment in order to give effect to the original intention of the Parties.
- (g) Headings. The headings used herein are for convenience and reference purposes only.
- (h) Governing Law. THIS AMENDMENT AND THE RIGHTS AND DUTIES OF THE PARTIES HEREUNDER SHALL BE GOVERNED BY AND CONSTRUED, ENFORCED AND PERFORMED IN ACCORDANCE WITH THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAW.
- (i) Counterparts. This Amendment may be executed in any number of counterparts, each of which shall be an original, but all of which together shall constitute one instrument.
- (j) Entire Agreement. This Amendment sets forth the entire agreement of the Parties hereto with respect to its subject matter, and supersedes all previous understandings, written or oral, with respect thereto.
- (k) Limitations of Obligations. Party A acknowledges that Party B has no obligations to either Party A or to SCE pursuant to the Second Amended and Restated Letter Agreement. Specifically and without limitation, Party B has no responsibility or obligation with respect to SCE's ability or


inability to utilize the Renewable Product. In addition, Party B acknowledges that Party A has no obligation to Party B pursuant to the Second Amended and Restated Letter Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed by their respective officers thereunto duly authorized, as of the date first written above.

Mountain View Power Partners, LLC,
a Delaware limited liability company.

California Department of Water Resources,
a department of the California Resources
Agency, an agency of the State of California,
with respect to its responsibilities pursuant to
California Water Code Section 80000, et seq.,
regarding the Department of Water Resources
Electric Power Fund, separate and apart from its
powers and responsibilities with respect to the
State Water Resources Development Systems.

By: _____
Name:

By: 
Name: *RUSSELL C. MILLS*

ACTING FOR

Title:

Title: **Timothy J. Haines**
Deputy Director

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powers and responsibilities with respect to the
State Water Resources Development Systems.

By: *Deborah Reyes*
Name: *Deborah Reyes*

By: _____
Name:

Title: *Vice President*

Title: